

810-6-3-.33 Industrial Development Board.

(1) An industrial development board created by an incorporated municipality within the State of Alabama pursuant to Article 4 of Chapter 54 of Title 11, Code of Alabama 1975, as amended, is exempt from sales and use tax on any tangible personal property purchased by the board or its duly authorized agent, provided the purchases are made in the name of the board, the board's credit is obligated and said purchases are paid for by the board with funds belonging to the board. The term "funds belonging to the board" shall normally be construed to mean those funds not exceeding the amount of the long term revenue bonds and any temporary borrowing evidenced by revenue bonds or notes maturing not later than 18 months from date of issue. (Section 11-54-96, Code of Alabama 1975)

(2) (a) The exemption in Section 11-54-96 does not apply to a contractor where the contractor has a construction contract with an industrial development board to furnish all materials and labor for use in the performance of the contract. The contractor is the consumer thereof of all the materials used in the performance of the construction contract which becomes part of real property. A contractor may purchase items of machinery or equipment not becoming part of the realty, tax exempt, where such items are intended for resale to the board in the form of tangible personal property. (Sections 40-23-1(a)(10) and 40-23-60(5), Code of Alabama 1975)

(b) The sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract awarded after October 1, 2000 but prior to July 1, 2004, with an industrial development board organized pursuant to Article 4 of Chapter 54 of Title 11, Code of Alabama 1975, is exempt from all state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with Rule 810-6-3-.77 entitled Exemption of Certain Purchases by Contractors and Subcontractors in conjunction with Construction Contracts with Certain Governmental Entities, Public Corporations, and Educational Institutions. (Section 40-9-33, Code of Alabama 1975, **repealed by Act 2004-638, effective July 1, 2004**)

(3) Notwithstanding any of the exemptions outlined above, an individual, partnership, or corporation organized for profit that is or will be treated for federal income tax purposes as the owner of property to which an industrial development board has title to, or a possessory right in, is liable for sales and use taxes as if the for-profit entity held title to the property unless the individual, partnership, or corporation would be entitled to use the property pursuant to a lease or other agreement entered into before May 21, 1992, or would be entitled to use the property at some future time pursuant to **an inducement agreement entered into or adopted before May 21, 1992. For-profit entities, however, may qualify for abatements of certain sales and use taxes pursuant to Chapter 9B of Title 40 of the Code of Alabama 1975. An individual, partnership, or corporation that is not organized for profit is not liable for sales and use taxes under Chapter 9B. Section 40-9B-7 only pertains to private users of private use property. Private user is defined in Section 40-2B-3 as "any individual, partnership, or corporation organized for profit that is or will be treated as the**

owner of private use property for federal income tax purposes.” Therefore, Section 40-9B-7 does not change the tax exempt status of a non-profit entity for sales and use tax purposes.

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Authority: Sections 40-2A-7(a)(5), 11-54-96, 40-9B-4, 40-9B-5, 40-9B-6, 40-9B-7, 40-23-1(a)(10), 40-23-31, 40-23-60(5), and 40-23-83, and 40-9-33, Code of Alabama 1975

History: Adopted February 6, 1968.
Amended October 10, 1974.
Amended August 24, 1982.
Amended September 29, 1982.
Readopted through APA effective October 1, 1982.
Amended May 22, 1993.
Amended: Filed February 20, 2001, effective March 27, 2001.
Amended: Filed May 6, 2005, effective June 10, 2005.